

34
10/1/01
wby

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JOHN RICHARD JAE, : CIVIL NO. 1:01-CV-0041
Plaintiff : (Judge Rambo)
v. : (Magistrate Judge Smyser)
CORRECTIONS OFFICER LESTER, :
Defendant :
FILED
HARRISBURG, PA

SEP 28 2001

ORDER

MARY E. D'ANDREA, CLERK
PER 9/9 DEPUTY CLERK

The plaintiff, a state prisoner proceeding *pro se*, commenced this 42 U.S.C. § 1983 action by filing a complaint on January 10, 2001.

On March 27, 2001, the defendant filed a motion to revoke the plaintiff's *in forma pauperis* status and to stay the proceedings. On April 10, 2001, the defendant filed a brief in support of that motion. The plaintiff requested and received extensions of time until September 24, 2001 to file a brief in opposition to the motion.

On June 27, 2001, the plaintiff filed a petition for a writ of mandamus and brief in support. No brief in opposition to the petition was filed. By an Order dated August 6, 2001

the defendant was ordered to, on or before August 14, 2001, either file a brief in opposition to the petition or file a statement indicating that he does not oppose the petition.

On August 16, 2001, the defendant filed a motion for a stay of the proceedings and an enlargement of time to respond to the petition for a writ of mandamus. The defendant contended that the plaintiff did not serve him with a copy of the petition for a writ of mandamus. The defendant sought an order that all action on the petition for a writ of mandamus is stayed until the plaintiff serves the defendant with a copy of the petition. On August 27, 2001, the defendant filed a brief in support of his motion. Also on August 27, 2001, the plaintiff filed a brief in opposition to the defendant's motion. The plaintiff asserts that he did serve a copy of his petition for a writ of mandamus on the defendant's counsel.

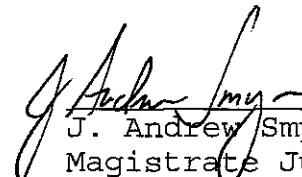
By an Order dated September 18, 2001, we scheduled a hearing to resolve the factual dispute about whether the plaintiff served the petition on the defendant. We noted that a hearing is necessary unless the defendant has received a copy of the petition, waives proper service and seeks a cancellation of the hearing. We scheduled the hearing for October 10, 2001.

On September 21, 2001, the defendant filed a document entitled "Defendant Corrections Officer Lester's Waiver of Proper Service of Plaintiff's Petition for Writ of Mandamus and Brief in Support thereof and Petition to Cancel Hearing of October 10, 2001." The defendant asserts that he obtained a copy of the petition for a writ of mandamus from the Clerk of Court on August 17, 2001 and that he is now waiving proper service of the petition. The defendant requests that the court enlarge the time for him to file his brief in opposition to the plaintiff's petition until August 27, 2001, and that the court cancel the hearing.

We will cancel the hearing. Addressing the defendant's request for an enlargement of time to August 27, 2001, we note that the defendant did include an argument that the petition should be dismissed in his August 27, 2001 brief in support of his motion to stay proceedings and for an enlargement of time to respond to the petition. However, the defendant has not filed a brief in opposition to the petition or a statement indicating that he does not oppose the petition. We will grant the defendant a brief extension of time to either file a brief

in opposition to the petition for a writ of mandamus or a statement indicating that he does not oppose the petition.

AND NOW, this 28th day of September, 2001, **IT IS HEREBY ORDERED** that the defendant's petition (doc. 33) to cancel the hearing of October 10, 2001 is **GRANTED**. The hearing scheduled for October 10, 2001 is **CANCELLED**. The writ of habeas corpus ad testificandum filed on September 18, 2001 is **VACATED**. The defendant's motion (doc. 24) for a stay and an enlargement of time is **DENIED**. The defendant is ordered to, on or before October 18, 2001, either file a brief in opposition to the petition for a writ of mandamus or a statement indicating that he does not oppose the petition. The plaintiff may file a reply brief in support of the petition for a writ of mandamus on or before November 1, 2001.



J. Andrew Smyser
Magistrate Judge

Dated: September 28, 2001.

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

September 28, 2001

Re: 1:01-cv-00041 Jae v. Lester

True and correct copies of the attached were mailed by the clerk to the following:

John Richard Jae
SCI-GREEN
BQ-3219
175 Progress Drive
Waynesburg, PA 15370

Michael J. McGovern, Esq.
Pennsylvania Department of Corrections
55 Utley Drive
Camp Hill, PA 17011

CC:

Judge	(<input type="checkbox"/>)	(<input type="checkbox"/>) Pro Se Law Clerk
Magistrate Judge	(<input checked="" type="checkbox"/>)	(<input type="checkbox"/>) INS
U.S. Marshal	(<input type="checkbox"/>)	(<input type="checkbox"/>) Jury Clerk
Probation	(<input type="checkbox"/>)	
U.S. Attorney	(<input type="checkbox"/>)	
Atty. for Deft.	(<input type="checkbox"/>)	
Defendant	(<input type="checkbox"/>)	
Warden	(<input type="checkbox"/>)	
Bureau of Prisons	(<input type="checkbox"/>)	
Ct Reporter	(<input type="checkbox"/>)	
Ctroom Deputy	(<input type="checkbox"/>)	
Orig-Security	(<input type="checkbox"/>)	
Federal Public Defender	(<input type="checkbox"/>)	
Summons Issued	(<input type="checkbox"/>)	with N/C attached to complt. and served by: U.S. Marshal (<input type="checkbox"/>) Pltf's Attorney (<input type="checkbox"/>)
Standard Order 93-5	(<input type="checkbox"/>)	
Order to Show Cause	(<input type="checkbox"/>)	with Petition attached & mailed certified mail to: US Atty Gen (<input type="checkbox"/>) PA Atty Gen (<input type="checkbox"/>) DA of County (<input type="checkbox"/>) Respondents (<input type="checkbox"/>)
Bankruptcy Court	(<input type="checkbox"/>)	
Other _____	(<input type="checkbox"/>)	

MARY E. D'ANDREA, Clerk

DATE:

9/28/01

BY:

JJB

Deputy Clerk